

	OAH 3-1100-21532-2
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of Michael M. Johnson	FINDINGS OF FACT, CONCLUSIONS, AND ORDER
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This matter was heard by telephone conference call before Administrative Law Judge (ALJ) Kathleen D. Sheehy on October 11, 2010, and October 25, 2010. The OAH record closed at the conclusion of the hearing on that date.

Krista Guinn Fink, Associate Legal Counsel, Minnesota Department of Corrections, appeared on behalf of the Department of Corrections (DOC). Michael M. Johnson, Offender Identification No. 168006, Minnesota Correctional Facility-Lino Lakes, appeared for himself without counsel.

STATEMENT OF THE ISSUE

May the Department collect a correctional fee of \$300 from Michael Johnson through the Minnesota Revenue Recapture Program?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In 1997, Michael Johnson was convicted of second-degree murder in Hennepin County District Court and was ordered to serve a 174-month sentence.¹

2. Johnson has been released on Intensive Supervised Release (ISR) and subsequently revoked multiple times since 2007.²

3. When he was released on ISR on August 10, 2009, he was living with his father in Ortonville, Minnesota. On August 11, 2009, his corrections agent notified him by letter addressed to his father's residence that he was required to pay a \$300 supervision fee based on his felony conviction and that the fee was due within one year from the start of supervision or upon discharge,

¹ Testimony of Michael Johnson; Ex. 1.

² Ex. 1.

transfer, or execution of sentence, whichever occurred first.³ Johnson was not eligible for waiver of the fee because he was employed full-time in the community.⁴

4. Johnson's release was revoked in September 2009 and again in June 2010. He is currently incarcerated at MCF-Lino Lakes.⁵

5. DOC Policy 201.013 (Supervision Fees – Field Services), effective August 4, 2009, provides that offenders placed on supervision must pay a supervision fee in the amount of \$300 for each felony. Part B of the Procedures specified in the Policy provides that when an offender has failed to pay the supervision fee within one year and the offender has not received a waiver, staff will submit the unpaid balance for revenue recapture. Unpaid fees are to be immediately submitted for revenue recapture upon revocation of probation and execution of sentence or revocation of supervised release.

6. By letter dated July 19, 2010, Johnson's corrections agent notified him that his supervision fee balance of \$300 had been submitted for collection to the State of Minnesota Revenue Recapture Program. The letter advised him that he had the right to contest the claim by requesting a hearing in writing within 45 days.⁶

7. On July 30, 2010, Johnson requested a hearing and contended the fee was imposed without his consent.⁷

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The ALJ has jurisdiction in this matter pursuant to Minn. Stat. §§ 241.272, 270A.08 and 270A.09 (2008).⁸

2. Under Minn. Stat. § 241.272, subd. 2, the commissioner of corrections may establish a schedule of correctional fees to charge persons convicted of a crime and supervised by the commissioner. The correctional fees on the schedule must be reasonably related to the offenders' ability to pay and the actual cost of correctional services. The commissioner may use any available civil means of debt collection in collecting a correctional fee.⁹

³ Ex. 2.

⁴ Testimony of Heidi Erickson.

⁵ Ex. 1.

⁶ Ex. 3.

⁷ Ex. 4.

⁸ All citations to Minnesota Statutes are to the 2008 edition.

⁹ Minn. Stat. § 241.272, subd. 3(b).

3. The Department of Corrections is a state agency authorized to use the Revenue Recapture Process to collect debts.¹⁰

4. Michael Johnson is liable for a supervision fee in the amount of \$300, and the Department of Corrections may use the Revenue Recapture Process to collect it.

Based on the Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED that the request of the Department of Corrections to collect the \$300 supervision fee from Michael M. Johnson through Revenue Recapture is **AFFIRMED**.

Dated: November 4, 2010.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded;
No Transcript Prepared

NOTICE

This Order is the final Decision in this matter pursuant to Minn. Stat. § 270A.09, subd. 3. Any person aggrieved by this Decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.

MEMORANDUM

During the hearing, the corrections agent clarified Mr. Johnson's confusion about the origin of the fee. Mr. Johnson incorrectly believed that it had been imposed without his consent for home monitoring equipment when he was placed on house arrest, or that it had been imposed based on his status as a fugitive. The corrections agent explained that the fee is imposed on every offender who is placed on supervised release. Mr. Johnson then objected to the fee on the basis that he would have chosen to serve his time without being released if he had known that a supervision fee would be imposed. The record reflects that Mr. Johnson has taken every opportunity available to him (six times) to be discharged from prison on supervised release.

¹⁰ Minn. Stat. § 270A.04.

As a factual matter, Mr. Johnson has not established that he would have declined release from prison had he known about the \$300 fee. More importantly, as a legal matter, it is immaterial whether Mr. Johnson knew about the fee prior to his release in August 2009. The statute gives the commissioner of corrections the discretion to impose and collect the fee at any time while the offender is under sentence or after sentence has been discharged, and the commissioner may use any available means to collect the debt.¹¹

Mr. Johnson also argued that he was entitled to appointment of a public defender to represent him during the hearing. At the outset of the hearing on October 10, 2010, Mr. Johnson expressed his mistaken understanding that counsel for the Department of Corrections would serve as his attorney during the hearing. The Administrative Law Judge then granted a continuance of the hearing from October 10, 2010, to October 25, 2010, to allow Mr. Johnson time to seek legal assistance elsewhere. When the hearing reconvened on October 25, 2010, Mr. Johnson stated that he believed he was entitled to appointment of counsel at public expense and objected to proceeding without an attorney. The Administrative Law Judge overruled his objection on the basis that this matter is not a criminal proceeding and there is no apparent constitutional or statutory authority for requiring anyone to represent him.

K.D.S.

¹¹ Minn. Stat. § 241.272, subd. 3.